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MAR 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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March 17, 1993

HAND DELIVERED

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Notice - MM Docket 92-265, MM Docket 92-266

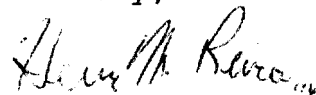
Dear Ms. Searcy:

In accordance with Section 1.1200 et. seq. of the Commission's rules, this is to advise that on Wednesday, March 17, 1993, Peter O. Price, President, and Edward L. Milstein, Vice Chairman, of Liberty Cable Company, Inc. ("Liberty") and Henry M. Rivera, Esq. and Ann Bavender, Esq., Ginsburg, Feldman and Bress, Chartered, met with Roy J. Stewart, William H. Johnson and Alexandra Wilson of the Mass Media Bureau to discuss issues in these proceedings.

The discussion involved presenting Liberty's position on cable programming access and cable rate regulation. The attachments to this Ex Parte Notice were used in that discussion.

A copy of this Ex Parte Notice was filed with the Commission and delivered to all of the above-named Commission personnel on March 17, 1993.

Sincerely,



Henry M. Rivera

Attachment

cc: Roy J. Stewart
William H. Johnson
Alexandra Wilson

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MAR 17 1993

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

LIBERTY CABLE COMPANY, INC.

PETER O. PRICE, PRESIDENT

575 Madison Avenue

New York, NY 10022

212-891-7771

PROGRAMMING ACCESS RULEMAKING

MM DOCKET 92-265

DISCRIMINATION EXISTS IN DISTRIBUTION OF VIDEO PROGRAMMING

- ▶ **EXPRESS FACILITIES-BASED DISCRIMINATION**
 - Liberty and other SMATV operators pay higher prices than cable operators with same number of subscribers.
 - Liberty and other SMATV operators fail to receive marketing support offered to cable operators.
 - = Discounts for new subscribers during incentive sales periods.

REGULATIONS

- ▶ DETAILED GOVERNMENT REGULATION IMPOSSIBLE
 - Herculean task.
- ▶ INSTEAD ADOPT REBUTTABLE PRESUMPTION OF ILLEGALITY FOR BOTH FACILITIES-BASED DISCRIMINATION AND EXCLUSIVE CONTRACTS.
 - Applicable to any express or implicit "facilities-based" discrimination in price, availability or other term or condition of programming.
 - Applicable to any exclusive contract to which cable operator is party or which benefits cable operator.
- ▶ TO OVERCOME PRESUMPTION, PROPONENT MUST SHOW DISCRIMINATION OR CONTRACT PROMOTES "EFFECTIVE COMPETITION."
 - Must show promotes "effective competition" as that term defined in rate regulation section of act, Section 623(l)(1).
 - Must make showing for all affected areas (areas served by adversely affected MVPDs).
 - If affected area already has "effective competition," must show that discrimination or contract ensures continuation of "effective competition."

ENFORCEMENT

▶ PROGRAMMER MAY ASK FOR DECLARATION OF LEGALITY

- Within sixty days of start of presumptively illegal discrimination or exclusive contract.
- For discrimination and contracts currently in effect, within sixty days of adoption of programming access rules.
- Affected MVPDs served and have opportunity to respond.

▶ MVPD MAY ASK FOR DECLARATION OF ILLEGALITY

- At any time.
- By pleading, on good faith belief, sufficient facts to show a presumption of illegality.
- No actual injury required to be shown.
- Programmer responds and attempts to show discrimination or exclusive contract promotes "effective competition."

▶ FCC ORDERS COMPLIANCE AND ISSUES FORFEITURE



THEY'RE DOING IT AGAIN!

In the face of rising consumer dissatisfaction, Time Warner Cable of New York City (including Manhattan Cable and Paragon), just announced their third price increase in two years. How can they demand more money for less service?

Switch to Liberty Cable,
New York's New Cable Company.
Better Building-Wide Service At Half The Price.

After years of rising prices for poor cable service in New York, Liberty Cable is offering comprehensive cable programming combined with high picture quality at half the price of other New York cable companies.

Cable television is no longer a monopoly.

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(212) 891-7777

or return the postage paid card attached.

LIBERTY CABLE
TELEVISION
Freedom to Choose